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Inducing Breach of Contract - Damages

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discretionary and that before granting it, the court must balance the respective interests involved. This case can be readily distinguished from the encroaching wall cases. While the remedy that the owner of the land has against the possessor in bad faith is fully set out in Article 508 of the Civil Code,[16] Article 660[17] does not provide the remedy that the owner of the estate below has against the proprietor of the estate above who renders the natural servitude more burdensome. Again, in *Young v. International Paper Comapny*[18] the court refused to enjoin the defendant from polluting a certain stream, when the evidence showed that the plaintiff could be properly compensated in damages and that the granting of an injunction would subject the defendant to great expenses, disproportionate to the rather insignificant benefits which the plaintiff would receive. From these cases it may be concluded that the Louisiana courts will be ready to "balance the equities" in cases that demand it and where the rights of the respective parties are not fully covered by express provisions of the Civil Code.

R.R.A.

INDUCING BREACH OF CONTRACT—DAMAGES—Plaintiff, a member of the Hospitality and Service Bureau of New Orleans which brought customers from city newcomers to clients of the organization, filed an action against a third party defendant for inducing her co-partner to breach her contract of partnership with plaintiff. The court held for the defendant saying, "It is now well settled that one who is not a party to a contract is not liable in damages to one of the parties to the contract for inducing the other party to breach the contract."[1] *Cust v. Item Company,* 8 So. (2d) 361 (La. 1942).

At common law, protection is given the interest of an individual in his contractual relations and in the fulfilment thereof,

16. Supra note 1.
17. Supra note 15.
18. 179 La. 803, 155 So. 231 (1934).

1. The only loss alleged to have resulted *directly* from the breach was the loss of six customers whose patronage was said to have been worth $105.00 a month. The court said that all other items of damage (certain traveling expenses in returning to rearrange the business, living expenses while in New Orleans, and also certain medical expenses incurred in treating her illness which she alleges was caused by the breach) would be too remote to justify a recovery by the plaintiff, even if the law of Louisiana permitted a party to the contract to recover damages from a third party for his inducing the other party to breach the contract.

because of the public policy involved in the security of transactions.[2] Generally this protection is available only against the other party to the contract and is not of such character as to be available against third persons.[3] However, when a third party maliciously induces the breach or interferes with the performance of a contract or uses physical force to accomplish the breach, there may be an actionable tort.[4]

In the United States there is a conflict among the authorities and the cases as to whether a contract terminable at will should be treated different from the ordinary contract. Some courts say that the fact that the employment was not for a fixed period but merely at the will of the parties has no effect upon the right of action,[5] while others say that no action lies unless the method of interference is in itself tortious.[6] Most of the cases, however, are committed to the general view that such contracts should be treated as ordinary contracts, though somewhat less protection is given.[7]

Until the monumental case of *Lumley v. Gye*,[8] the English courts had allowed damages only against third parties inducing a breach of contract where there was seduction, beating, or entic-

2. Harper, A Treatise on the Law of Torts (1933) 472, § 227.

Compare Louisiana cases which say that the law protects the business by which a man gains a livelihood as sacredly as it does his life, and an unlawful interference with that business subjects the party injuring the business to damages. Graham v. St. Charles Street Railroad Co., 47 La. Ann. 1657, 18 So. 707 (1895).

3. Harper, loc. cit. supra note 2.

4. Id. at 476-478, § 229; Prosser, Handbook of the Law of Torts (1941) 986-990.

5. United States Fidelity & Guaranty Co. v. Millonas, 206 Ala. 147, 149, 89 So. 732, 735 (1921); Prosser, op. cit. supra note 4, at 981-982, § 104; Carpenter, Interference with Contract Relations (1928) 41 Harv. L. Rev. 743; Smith, Crucial Issues in Labor Litigation (1907) 20 Harv. L. Rev. 253, 261. See also Johnston Harvester Co. v. Meinhardt, 9 Abb. N.C. 393, 397 (N.Y. S.Ct. 1880).

6. Harper, op. cit. supra note 2, at 474-475, § 228; Sayre, Inducing Breach of Contract (1923) 36 Harv. L. Rev. 663, 700 ("To extend the doctrine of *Lumley v. Gye* to cover cases where no breach of contract has taken place would be as preposterous as it would be unjust."). For cases upholding this view, see Harper, supra, at 475, n. 14.

7. McGuire v. Gerstley, 26 App. C. C. 193 (1905), affirmed 204 U.S. 489, 27 S.Ct. 332, 51 L.Ed. 581 (1907); Harley and Land Corp. v. Murray Rubber Co., 31 F.(2d) 932 (C.C.A. 2d, 1929), cert. denied 219 U.S. 872, 49 S.Ct. 513, 73 L.Ed. 1007 (1928). Prosser, op. cit. supra note 4, at 981, § 104.

"The interest of labor unions in advancing the interests of their members will justify interference with contracts of employment terminable at will, where the object sought is clearly connected with the immediate benefit of the workmen; but the tendency has been to deny any such privilege where the connection is more remote or indirect." Prosser, op. cit. supra, at 972, 1001-1011. Where the contract is for a definite period, the unions are given even less right to interfere. Id. at 1002.

8. 2 El. & Bl. 216, 118 Eng. Reprint 749 (1853); Bohlen, Cases on Torts (3 ed. 1927) 934.

ing, and where the party who breached was a menial or domestic servant.[9] That case extended the old doctrine to include all contracts of service. The doctrine thus announced, that intentional interference with a contract may be an actionable tort, was received at first with hesitation; but later affirmed in *Bowen v. Hall.*[10] It was extended in *Temperton v. Russell*[11] to include interference with the performance of a contract for other than personal service. The great majority of American courts have not accepted this rule as applied to all contracts.[12] A dwindling minority refuse its application to interference with relations other than that of master and servant.[13]

Interference with contract has remained almost entirely an intentional tort, and liability has not been extended generally to the various forms of negligence by which performance of a contract may be prevented or rendered more burdensome.[14]

Once the intentional interference with the contract is found, liability usually turns on the purpose or object for which the breach was induced, and the burden of proving justification or privilege is with the defendant.[15] In *Lumley v. Gye* great stress

9. Harper, op. cit. supra note 2, at 473, § 227.

10. 6 Q.B.D. 333 (1881). See Sayre, supra note 6, at 669.

11. [1893] 1 Q.B. 715. See Sayre, supra note 6, at 670.

12. A large number of cases can be found collected in the notes in (1908) 11 L.R.A. (N.S.) 202; (1908) 16 L.R.A. (N.S.) 746; (1910) 28 L.R.A. (N.S.) 615; (1915) L.R.A. 1915F, 1076. For illustrative American cases, see Employing Printers' Club v. Doctor Blosser Co., 122 Ga. 509, 50 S.E. 353 (1905); Doremus v. Heunessy, 176 Ill. 608, 52 N.E. 924 (1898); London Guarantee & Accident Co. v. Horn, 206 Ill. 493, 69 N.E. 526 (1903). See also Sayre, supra note 6, at 671 (1923).

13. Boyson v. Thorn, 98 Cal. 578, 33 Pac. 492 (1893); Chambers v. Baldwin, 91 Ky. 121, 15 S.W. 57 (1891); Boulier v. Macauley, 91 Ky. 135, 15 S.W. 60 (1891). See also Glencoe Sand and Gravel Co. v. Hudson Brothers Comm. Co., 138 Mo. 439, 40 S.W. 93 (1897) (doctrine rejected except where the relation of master and servant exists).

14. Prosser, op. cit. supra note 4, at 991, § 104.

15. Aikens v. Wisconsin, 195 U.S. 194, 25 S.Ct. 3, 49 L.Ed. 154 (1904); Connors v. Connolly, 86 Conn. 641, 86 Atl. 600, 45 L.R.A. (N.S.) 564 (1913); Berry v. Donovan, 188 Mass. 353, 74 N.E. 603, 5 L.R.A. (N.S.) 899, 108 Am. St. Rep. 499, 3 Ann. Cas. 738 (1905); DeMinico v. Craig, 207 Mass. 593, 94 N.E. 317, 42 L.R.A. (N.S.) 1048 (1911).

At common law the defendant is extended the privilege to interfere with relations in the following instances:

(1) To protect or exercise an existing property interest;
(2) To exercise a "civil," "legal," or "general" right;
(3) To protect the interests of another individual;
(4) To protect the general health and morals of the community;
(5) To acquire property by fair means, i. e., the privilege of competition;
(6) To advance the interests of an economic group, a social group, or an institution recognized as desirable by society. Comment (1932) 17 Corn. L. Q. 509.

"It may be true that even with the use of categories the whole problem will remain fundamentally a question of balancing interests. Yet this does

was laid on the element of "malice," which was said to be requisite to sustain the action. No satisfactory definition of "malice" was given. In the last analysis it is a purely mental element, and consists of the intention to appropriate for oneself the promised advantages which another has secured by contract.[16] It may seem harsh to decide these cases upon the thin line of motive; but in other instances in the law of torts, where the conflicting interests are as evenly balanced as here, examination of the defendant's motive has been justly resorted to.[17]

The court's statement in the principal case that "one who is not a party to a contract is not liable in damages to one of the parties to the contract for inducing the other party to breach the contract"[18] must be read in the light of a multitude of Louisiana decisions in point. Careful analysis of these cases reveals the fact that the results reached in Louisiana are substantially in accord with those reached in a majority of the common law states in this country. Louisiana courts have broadly stated that the action for damages against the third party will not be permitted because a business man has no right to be protected from fair competition.[19] However, this rule has been limited by a number of exceptions found in the case of threats, fraud, falsehood, deception, benefit, actual physical violence, or malice.[20]

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not obviate the fact that if the interests that lead the court to their final results are set down, and carefully calculated, there will at least be signposts leading out of the bog that the doctrine at present seems to be in." Id. at 522.

16. Harper, op. cit. supra note 2, at 476-477, § 229 ("The somewhat question begging formula often used is the 'intentional doing of a wrongful act, without legal justification or excuse.'"); Sayre, supra note 6, at 675, 702.

17. See Pollock, Torts (8 ed. 1934) 314 (law of malicious prosecution); 267 (questions of privilege as a defense for slander); 307-308 (slander of title cases); Sayre, supra note 6, at 679 (in many cases of evenly balanced interests).

18. Cust v. Item Co., 8 So.(2d) 261, 363 (La. 1942).

19. Orr v. Home Mutual Insurance Co., 12 La. Ann. 255 (1857); Graham v. St. Charles Street Railroad Co., 47 La. Ann. 1656, 18 So. 707, 49 Am. St. Rep. 436 (1895); Lewis v. Huie-Hodge Lumber Co., 121 La. 658, 46 So. 685 (1908); Gilly v. Hirsh, 122 La. 966, 48 So. 422, 20 L.R.A. (N.S.) 972 (1909); McGee v. Collins, 156 La. 291, 100 So. 430 (1924); Deon v. Kirby Lumber Co., 162 La. 671, 111 So. 55, 52 A.L.R. 1023 (1926); Hartman v. Greene, 193 La. 234, 190 So. 390 (1939), cert. denied 308 U.S. 612, 60 S.Ct. 180, 84 L.Ed. 512 (1939).

Where a merchant undersells or oversells his neighbor or carries on other lawful competition, even though his neighbor be injured thereby, it is said that his injury, being the result of lawful competition, is *damnum absque injuria* and damages are not allowed. See *Orr v. Home Mutual Insurance Co., Gilly v. Hirsh,* and *Deon v. Kirby Lumber Co.,* supra.

When a privileged communication or publication occasions breach of contract, damages will not be allowed against such publisher. See Richardson v. Cooke, 129 La. 365, 56 So. 318 (1911).

20. Fenner v. Watkins, 16 La. 204 (1840) (unauthorized opposition against authorized ferry); Orr v. Home Mutual Insurance Co., 12 La. Ann. 255 (1857)

Act 50 of 1892[21] is a criminal statute which provides in Section 2 that the third person inducing breach of contract shall be fined and shall be liable in a civil action double the amount of damages which such employer or landlord may suffer by such abandonment. In *Kline v. Eubanks*[22] it was held that the civil action provided by that statute would not lie until after the criminal conviction.[23] With reference to the argument that there was an independent civil action under the general provision in Article 2315 of the Louisiana Civil Code of 1870 ("every act whatever of a person which causes injury to another obliges him by whose fault it happened to repair it"), the court held that employing a laborer already employed by another person would not create a

(case dismissed because of failure to find malice); Dickson v. Dickson, 33 La. Ann. 1261 (1881) (threats and inducement gave right to damages); Graham v. St. Charles Street Railroad Co., 47 La. Ann. 1656, 18 So. 707, 49 Am. St. Rep. 436 (1895) (threats occasioned damage); Kilne v. Eubanks, 109 La. 241, 33 So. 211 (1902) (neither malice nor fraud charged, action not maintainable); Wolfe and Sons v. New Orleans Tailor-Made Pants Co., 113 La. 388, 37 So. 2, 67 L.R.A. 65 (1904) (no cause or right of action where ignorance of previous contract); Lewis v. Huie-Hodge Lumber Co., 121 La. 658, 46 So. 685 (1908) (malice and threats were not made out and case dismissed); Gilly v. Hirsh, 122 La. 966, 48 So. 422, 20 L.R.A. (N.S.) 972 (1909) (molesting of customers properly enjoined); Sandlin v. Coyle, 143 La. 121, 78 So. 261, L.R.A. 1918D 389 (1918) (acts of violence gave right to damages); McGee v. Collins, 156 La. 291, 100 So. 430 (1924) (malicious or otherwise improper motive not found, hence dismissed); Deon v. Kirby Lumber Co., 162 La. 671, 111 So. 55, 52 A.L.R. 1023 (1926) (malice not made out and case dismissed); Carson v. Stephens, 14 La. App. 272, 129 So. 381 (1930) (threats entitled plaintiff to damages); Walsh v. New Orleans Cotton Exchange, 188 La. 338, 177 So. 68 (1937) (motive not examined when rules of cotton exchange followed). See also Hartman v. Greene, 193 La. 234, 190 So. 390 (1939), cert. denied 308 U.S. 612, 60 S.Ct. 180, 84 L.Ed. 512 (1939).

In the celebrated case of Moulin v. Monteleone, 165 La. 169, 115 So. 447 (1927), damages were disallowed against defendant who persuaded plaintiff's wife to breach her contract by violating her marriage vow. It was suggested that some remedy should be provided but that the best means of suppressing such action would be by a penal statute rather than by allowing damages.

This is the general common law rule also. See Comment (1932) 17 Corn. L. Q. 509.

21. This act was repealed by Act 54 of 1906 [Dart's Stats. (1939) §§ 4384-4386], but Section 2 dealing with interference with contractual relations was left substantially the same as in the old act with the same penalty for violation. Section 3 makes it a misdemeanor to "falsely or fraudulently cause the arrest of, or otherwise unlawfully defame a hired person, tenant or sharehand, who has not violated the contract, or after its expiration."

Article 2750 of the Louisiana Civil Code of 1870 fixes the damages as between the laborer and his employer when the laborer leaves his employ before the time of his engagement has expired, but it has been held that this article has no application in a suit for damages against a third party. Wolfe & Sons v. New Orleans Tailor-Made Pants Co., 113 La. 388, 37 So. 2, 67 L.R.A. 65 (1904).

22. 109 La. 241, 33 So. 211 (1902).

23. It was further said that it was a matter of common knowledge that this act applies only to agricultural laborers and tenants and should not be given general application to all contracts. Wolfe & Sons v. New Orleans Tailor-Made Pants Co., 113 La. 388, 394, 37 So. 2, 5, 67 L.R.A. 65, 70 (1904).

liability on the part of the one employing him, unless it was done with some degree of fraud or malice.

The general Louisiana rule announced by Chief Justice O'Niell in the principal case, read in the light of its established exceptions, is an equitable disposition of the conflict of interests presented when the court is called upon to consider the interest of one individual in the security of transactions and, at the same time, the interest of another individual in the right to free competition. Summed up, our present rule can be stated as follows: One who is not a party to a contract is not liable in damages to one of the parties to the contract for inducing the other party to breach the contract, except when unlawful force or some definite degree of fraud or malice is present.

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MINERAL RIGHTS—GRAVEL NOT INCLUDED IN MINERAL RESERVATION—INTENTION OF PARTIES TEST APPLIED—By an act of sale the defendant acquired from the plaintiffs the land in question subject to a reservation in the deed in favor of the plaintiff-vendor of nine-twentieths of all "the mineral, oil and gas rights." Commercial deposits of gravel were found on the tract and the plaintiffs seek to recover their share alleging that gravel was included in the mineral reservation. *Held,* the parties in drawing up the deed did not intend to reserve the gravel deposits in the deed. *Holloway Gravel Company, Incorporated v. McKowen,* 9 So. (2d) 228 (La. 1942).

The court in the instant case was eminently correct in the application of the intention of the parties theory,[1] since the question as to whether or not gravel is a mineral[2] is a difficult, if not

1. Although the Louisiana court has never been called upon to decide whether or not sand and gravel are included in the general term "mineral rights," a few indications of their instinctive reaction to the meaning of the term are listed. In the case of Logan v. State Gravel Co., 158 La. 105, 110, 103 So. 526, 528 (1925), in which a contract to remove gravel was held to be a lease, the court said, "We have an example of a lease of lands for mining (or quarrying) purposes . . .," thus indicating that in the minds of the justices there is a distinct difference between mining and quarrying. In the case of Gonzales v. Watson, 162 La. 1048, 1053, 111 So. 416, 418 (1927) the court, in speaking of the legislature's idea in defining a real estate broker, said "It [the legislature] did not have in contemplation gravel or mineral leases." Here the court signifies by the use of the disjunctive "or" that gravel and minerals fall into definitely separate categories. Article 552 of the Louisiana Civil Code of 1870 uses both the term "mines" and the term "quarries."

2. It is interesting to note that the federal income tax law has included gravel in the broad term "minerals" dealing with the deductions from the gross income by means of depletion. C.C.H. 1942 Fed. Tax. Serv. 1923 (m-d).